IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

R.S.A. No. 3296 of 2005 (O&M)

Date of Decision : 24.9.2007

Municipal Council, Jind & Anr.

.....Appellants

Versus

Sohan Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Jagdish Manchanda, Advocate
for the appellants.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff for recovery, has been ordered to be decreed.

The case set up by the plaintiff was that the Municipal Council, Jind advertised on 20.2.1997 that there will be an auction of contract for lifting of dead animals within the Municipal limits of Jind for the period 1.4.1997 to 31.3.1998. A sum of Rs. 10,000/- (Rupees ten thousand only) was to be deposited before start of the auction and 1/4th of the contract money was to be paid by the successful bidder at the fall of hammer and the 1/4th of the contract money was to be paid upto 15.4.1997 and remaining half contract money was to be paid in three monthly installments on or before 15.7.1997 and 15.10.1997 with interest @ 18% per annum. The

plaintiff participated in the auction after depositing Rs. 10,000/-(Rupees ten thousand only) and contract of Rs. 5,70,000/- (Rupees five lac and seventy thousand only) was awarded to him as he was the highest bidder. A sum of Rs. 1,40,000/- (Rupees one lac and forty thousand only) was deposited on 20.2.1997. However, thereafter a proposal for giving contract for two years i.e. 1997-98 and 1998-99. The said action was objected by the plaintiff respondent as well as other contractors on the plea that they did not have sufficient money with them. It was the case of the plaintiff that defendants informed them that contract money for the year 1998-99 i.e. half of the contract money of two years will be received in that year itself. On this assurance, the contractors, including the plaintiff participated in the auction and bid of the plaintiff was of Rs. 9,30,000/- (Rupees nine lac and thirty thousand only). The contract was to start from 1.4.1997 but the defendants appellant did not allow the plaintiff to start the work without any reason. When the plaintiff demanded refund of a sum of Rs. 1,50,000/- (Rupees one lac and fifty thousand only),he was told that by way resolution dated 29.3.1997 the contract of the plaintiff had been cancelled. The action was challenged being illegal and against the provisions of law. It was also pleaded that the defendants caused loss to the plaintiff and give undue benefit to their own man, by allowing some other contractor to function for the period 1.4.1997 to 10.4.1997 by receiving a sum of Rs. 15,000/- (Rupees fifteen thousand only) and another sum of Rs. 6,10,000/-from said contractor for the year 1997-98. The order forfeiting the contract was also challenged for want of opportunity of hearing or show cause notice. It was further claimed that defendant have not suffered any loss as the contract for

the year 1997-98 was given for Rs. 6,25,000/- (Rupees six lac and twenty five thousand only) and for the year 1998-99 for Rs. 6,14,000/- (Rupees six lac and fourteen thousand only).

The written statement was filed by the defendants, challenging the maintainability of the suit. It was also claimed that suit as an indigent person was not competent. It was denied that the defendants appellant did not allow him to start the work. It was also claimed that the plaintiff failed to deposit the first instalment as such he was not allowed to work.When he failed to deposit the amount of first instalment, the contract was given to some another contractor. The defendants never acted against the law. However, the defendants could not refund the amount due to their financial weak position. The plaintiff was not entitled to any interest on the amount.

The learned trial Court on issue No.1, recorded a finding that in view of the admission made in para 9 of the written statement by the defendant appellant that financial position of the Municipal Council, Jind was weak, it was on account that amount could not be refunded. The similar plea was also taken in reply to para 10 of the plaint by the defendants. The said pleading was taken to be admission in favour of the plaintiff. The admission was sought to be rebutted on the plea that as the prayer for dismissal of the suit was made, and it was also claimed that plaintiff was not entitled to an amount as no importance could be paid to such admission. The learned Courts below by taking into account of admission decreed the suit. The appeal against the said judgment and decree also failed.

The learned counsel for the appellant contended that by way of evidence the appellants had produced on record a copy of the letter Ex.P-1

vide which the contract in favour of respondent plaintiff was cancelled and money was forfeited. The orders have not been set aside. The learned Courts below, therefore, were not justified in decreeing the suit. This contention of the learned counsel for the appellants cannot be accepted as Ex.P-1 is contrary to the pleading raised in the written statement wherein the right of the plaintiff respondent to seek refund was admitted and it was specifically pleaded, that it was due to the financial constraint the said amount was not refunded. The said admission was in fact to cover the contact given to the other party before the cancelling the same. It is settled law that no evidence beyond pleading can be looked into. Consequently, there is no merit in this regular second appeal.

Dismissed.

24.9.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**